

**INFANT/TODDLER AND
FAMILY RIGHTS:
BIRTH TO 3 CONNECTIONS
IN SOUTH DAKOTA**



Because the first three years build a lifetime.

**UNDER THE IDEA, PART C PROGRAM
FOR EARLY INTERVENTION SERVICES**

Department of Education

Revised March 2006

**Family Rights
Procedural Safeguards Notice**

As a result of the December 3, 2004 amendments to the Individuals with Disabilities Education Act (IDEA 2004), parental rights in early intervention have been revised. Until final regulations are issued by the U.S. Department of Education implementing the new law, this document will be used to notify you of your rights under IDEA 2004. Please review them carefully and if you have questions or need assistance in understanding the provisions of the state's early intervention rules, contact any of the organizations listed at the end of this document.

It is the policy of the South Dakota Department of Education to provide services to all persons without regard to race, color, creed, religion, sex, disability, ancestry, or national origin in accordance with state law (SDCL 20-13) and federal law (Title VI of Civil Rights Act of 1964, the Rehabilitation Act of 1973 as amended, and the Americans with Disabilities Act of 1990).

TABLE OF CONTENTS

Forward	ii
Introduction	1
Parental Consent	3
Prior Notice	5
Examination of Records.....	6
Confidentiality of Information.....	6
Individual Child Complaints.....	11
Surrogate Parents	26
Individualized Family Service Plan Flow Chart.....	28
Glossary	29
For More Information	31

FORWARD

Infant/Toddler and Family Rights: Birth to 3 Connections in South Dakota describes your child's and family's rights, as defined by Part C of the federal law - Individuals with Disabilities Education Act (IDEA). IDEA includes provisions for early intervention services for eligible children starting at birth.

Because this document is an official notice of your rights under federal regulation, some terms may be unfamiliar to you. For this reason, words that are ***bold and italicized*** are defined in the glossary.

The service coordinator working with your family can suggest additional materials to help you understand your rights. He/she can also suggest ways that you and other family members can be partners with professionals to help meet the developmental needs of your child.

INTRODUCTION

The Part C system, Birth to 3 Connections in South Dakota, is designed with the intent to maximize family involvement and provide explicit parental consent in each step of the process from the determination of eligibility through service delivery.

Ensuring that *parents* maintain a leadership role in services to their child necessitates the opportunity for *parents* to be informed about the safeguards which have been established to protect them and their child. Participation in the early intervention system for infants and toddlers is voluntary for you and your family.

The general rights you have as a *parent* include:

- The right to choose to participate or not in the Birth to 3 Connections program in South Dakota;
- The right to participate as a member of the team working with your child to the extent you wish to participate;
- The right to receive a full explanation of any *evaluations*, *assessments*, services and changes considered for your child, in the language you speak or in your mode of communication;
- The right to refuse services without jeopardizing the services you do want;
- The right to a timely, *multidisciplinary evaluation* and *assessment*;

- The right, if eligible under Part C, to appropriate early intervention services for your child and family as addressed in an ***Individualized Family Service Plan (IFSP)***;
- The right to ***evaluation, assessment, IFSP*** development, service coordination and procedural safeguards at no cost. You may be charged for other early intervention services on a sliding fee schedule. However, your inability to pay will not prevent your child or family from receiving services;
- The right to request a change in service coordinators;
- The right to choose not to use your health insurance to pay for early intervention services;
- The right to receive timely written notice before a change is proposed or refused in the identification, ***evaluation***, or placement of your child, or in the provision of services to your child or family;
- The right to receive services in your child's ***natural environment*** to the extent appropriate for your child;
- The right to have all ***personally identifiable*** information treated as confidential; and
- The right to an impartial hearing to resolve ***parent***/provider disagreements.

In addition to the general rights noted above, you are entitled to be notified of specific procedural safeguards

under the Birth to 3 Connections program. These rights include: Parental Consent, Prior Notice, Examination of **Records**, Confidentiality of Information; Individual Child Complaints; and Surrogate Parents. Each of these safeguards are described below.

PARENTAL CONSENT

Consent means that: (1) you have been fully informed of all information relative to the activity for which consent is sought, in your **native language** or other mode of communication; (2) you understand and agree in writing to the carrying out of the activity for which your consent is sought, and the consent describes that activity and lists the **records** (if any) that will be released and to whom; and (3) you understand that the granting of consent is voluntary on your part and may be revoked at any time.

Your written consent must be obtained before: (1) conducting the initial **evaluation** and **assessment** of your child; and (2) initiating the provision of early intervention services. If you do not give consent, an early intervention program consultant shall make reasonable efforts to ensure that you:

- (1) Are fully aware of the nature of the **evaluation** and **assessment** or the services that would be available; and
- (2) Understand that your child will not be able to receive the **evaluation** and **assessment** or services unless consent is given.

If you do not give your consent for initial **evaluation**, an early intervention program consultant may provide encouragement

by: (1) providing you with relevant literature or other materials; (2) offering you peer counseling to enhance your understanding of the value of early intervention and to address your concerns about participation in the Birth to 3 Connections programs; and (3) periodically renewing contact with you, on an established time schedule, to determine if you have changed your mind concerning the desirability of recommended procedures or services.

If you do not give your consent for the initial *evaluation*, the early intervention program consultant may initiate an impartial hearing for resolving *parent*/provider disagreements including impartial due process procedures.

In addition, as the *parent* of a child eligible under the Birth to 3 Connections program, you may determine whether your child, or other family members, will accept or decline any early intervention services under this program in accordance with state law. You also may decline such a service after first accepting it, without jeopardizing other early intervention services under this program.

Finally, you have the right to written notice of and written consent to the exchange of any *personally identifiable information* collected, used, or maintained under the Birth to 3 Connections program, among agencies consistent with Federal and State laws. (See section on Confidentiality of Information.)

PRIOR NOTICE

Written prior notice must be given to you five working days before an early intervention program consultant and/or agency proposes, or refuses, to initiate or change the identification, ***evaluation***, or placement of your child, or the provision of appropriate early intervention services to your child and your family.

The notice must be sufficient in detail to inform you about:

- (1) The action that is being proposed or refused;
- (2) The reasons for taking the action;
- (3) All procedural safeguards that are available under the program; and
- (4) The state complaint procedures including a description of how to file a complaint and the timelines under those procedures.

The notice must be:

- (1) Written in language understandable to the general public and provided in your ***native language*** unless it is clearly not feasible to do so.
- (2) If your ***native language*** or other mode of communication is not a written language, the early intervention program consultant shall take steps to insure that:
 - (a) The notice is translated orally or by other means to you in your ***native language*** or other mode of communication;
 - (b) You understand the notice; and
 - (c) There is written evidence that the requirements of this section have been met.
- (3) If you are deaf, blind, unable to read, or have no written language, the mode of communication must be that normally used by you (such as sign language, braille, or oral communication).

EXAMINATION OF RECORDS

In accordance with the Confidentiality of Information procedures in this notice, you must be afforded the opportunity to inspect and review *records* relating to *evaluations* and *assessments*, eligibility determinations, development and implementation of *IFSPs*, individual complaints dealing with your child, and any other area under the Birth to 3 Connections program involving *records* about your child and your family.

CONFIDENTIALITY OF INFORMATION

The early intervention program consultant and participating agencies must provide you the opportunity to inspect and review any *records* relating to your children which are collected, maintained or used by the early intervention program consultant and/or agency under Part C. The early intervention program consultant or agency must respond to a request without unnecessary delay and before any meeting regarding an *IFSP* or hearing relating to identification, *evaluation*, or placement of your child, and in no case more than 45 days after the request has been made.

The right to inspect and review *records* includes:

- (1) The right to a response from the early intervention program consultant or agency to reasonable requests for explanations and interpretations of the *record*;

- (2) The right to request that the early intervention program consultant or agency provide **records** containing the information if failure to provide those copies would effectively prevent you from exercising the right to inspect and review the **records**; and
- (3) The right to have someone representing you inspect and review the **record**.

An early intervention program consultant or agency may presume that you have the authority to inspect and review **records** relating to your child unless it has been advised that you do not have the authority under applicable State law governing such matters as guardianship, separation and divorce.

Each **participating agency** and early intervention program consultant shall keep a **record** of parties obtaining access to **early intervention records** collected, obtained, or used under this part (except access by **parents** and authorized employees of the **participating agency** and early intervention program consultant), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the **record**.

If any **record** includes information on more than one child, you have the right to inspect and review only the information relating to your child, or to be informed of that specific information.

Each early intervention program consultant and/or **participating agency** shall provide you, on request, a list of the types and locations of **records** collected, maintained, or used by the agency.

An early intervention program consultant and/or *participating agency* may charge a fee for copies of *records* which are made for *parents* under this part if the fee does not effectively prevent you from exercising your right to inspect and review those *records*. An early intervention program consultant and/or *participating agency* may not charge a fee to search for or to retrieve information under Part C.

If you believe that information in *records* collected, maintained, or used under Part C is inaccurate or misleading, or violates the privacy or other rights of your child or family, you may request the early intervention program consultant or *participating agency* which maintains the information to amend the information.

- (1) The agency or early intervention program consultant decides whether to amend the information in accordance with the request, you will be informed of receipt of the request.
- (2) If the agency or early intervention program consultant decides to refuse to amend the information in accordance with the request, you will be informed of the refusal and be advised of the right to a hearing.

The agency or early intervention program consultant or agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

If, as a result of the hearing, an early intervention program consultant or agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it amends the information accordingly and will inform you in writing.

- (1) If, as a result of the hearing, the agency or early intervention program consultant decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, you will be informed of your right to place in the **records** of your child a statement commenting on the information and setting forth any reasons for disagreeing with the decision of the early intervention program consultant or agency.
- (2) Any explanation placed in the **records** of the child under this section must: (a) be maintained by the early intervention program consultant or agency as part of the **records** of the child as long as the **record** or contested portion (that part of the **record** with which you disagree) is maintained by the early intervention program consultant or agency; and (b) if the **records** of the child or the contested portion is disclosed by the early intervention program consultant or agency to any party, the explanation must also be disclosed to the party.

A hearing held under this section must be conducted according to the procedures under '99.22 of Family Education Rights & Privacy Act (FERPA) (34 CFR Part 99).

Parental consent must be obtained before **personally identifiable** information is: (a) disclosed to anyone other than officials of early intervention program consultants or participating agencies collecting or using information under Part C, subject to paragraph (2) of this section; or (b) used for any purpose other than meeting a requirement under Part C.

Information from your child's **early intervention record** cannot be released to participating agencies without your consent unless authorized to do so under FERPA:

- Each early intervention program consultant and/or ***participating agency*** protects the confidentiality of ***personally identifiable*** information at collection, storage, ***disclosure***, and ***destruction*** stages;
- One official of each early intervention program consultant and/or ***participating agency*** assumes responsibility for insuring the confidentiality of any ***personally identifiable*** information;
- All persons collecting or using ***personally identifiable*** information receive training or instruction regarding South Dakota's policies and procedures under IDEA and FERPA;
- Each early intervention program consultant and/or ***participating agency*** maintains, for public inspection, a current listing of the names and positions of those employees within the early intervention program consultant and/or agency who have access to ***personally identifiable*** information;
- The early intervention program consultant and/or agency informs ***parents*** when ***personally identifiable*** information collected, maintained, or used under this part is no longer needed to provide services to the child; and
- The information is destroyed at the request of the ***parents***. (Permanent ***records*** of the child's name, address, and phone number may be maintained.

If the U.S. Department of Education or its authorized representatives collect any ***personally identifiable*** information regarding children eligible under this part which is not subject to the Privacy Act of 1974, the U.S. Secretary of Education applies the requirements of the Statute (5 USC section 552A) and the regulations implementing those provisions.

INDIVIDUAL CHILD COMPLAINTS

If you believe the Birth to 3 Connections has violated a federal or state regulation, you may file a complaint with **Special Education Programs Part C Coordinator**. Upon receiving your written complaint, an investigation will be completed.

If you disagree with an *early intervention* program consultant and/or agency on the

- (1) identification,
- (2) *evaluation*,
- (3) placement of your child, or
- (4) provision of appropriate early intervention services to your child or family, you have the right to a timely administrative resolution of your concerns.

The administrative resolution process for your concerns may proceed as a COMPLAINT, MEDIATION, or IMPARTIAL DUE PROCESS HEARING. Each process to resolve a disagreement has individual procedures that are followed. Please review the procedures and decide which one would work best for your situation.

COMPLAINT

A complaint is a written signed statement by an individual or organization, including a complaint filed by an individual or organization from another state, containing a statement that the state Birth to 3 Connections program or a local Birth to 3 Connections program has violated a requirement of federal or state statutes or regulations that apply to a program and a statement of the facts on which the complaint is based.

The violation in question must have occurred not more than one year before the date that the complaint is received by Birth to 3 Connections unless a longer period is reasonable because:

1. The violation in question continues for that child or other children; or
2. The complainant is requesting reimbursement or corrective action for a complaint that occurred not more than three years before the date on which the complaint is received by Birth to 3 Connections program.

In resolving the complaint in which the state Birth to 3 Connections program has found a failure to provide appropriate services, the state Birth to 3 Connections program, pursuant to its general supervisory authority under Part C of the IDEA, must address:

1. How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child; and
2. Appropriate future provision of services for all children with disabilities.

The secretary of the Department of Education appoints a complaint investigation team from the state Birth to 3 Connections program. The team may conduct an on-site investigation if it determines that one is necessary. The complaint team shall give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. The complaint team

makes a recommendation to the secretary, and after reviewing all relevant information, the secretary shall determine whether the complaint is valid. The secretary shall submit a written report of the final decision to all parties involved, including findings of fact, conclusions, and reasons for final decision.

All complaints must be resolved within 60 calendar days after the receipt of the complaint by the secretary as stated in this section. An extension of the 60 day time limit may be granted only if exceptional circumstances exist with respect to a particular complaint.

If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues, of which one or more are part of that hearing, the state Birth to 3 Connection program must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in this section.

If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties:

1. The hearing decision is binding; and
2. The state Birth to 3 Connections program must inform the complainant to that effect.

A complaint alleging a failure to implement a due process hearing decision must be resolved by the state Birth to 3 Connections program.

MEDIATION

Mediation is an effective way to resolve differences between you and the Birth to 3 Connections program. Mediation is free and conducted by someone who is not employed by the program.

The state shall ensure that procedures are established and implemented to allow parties to disputes involved in the proposal to initiate or change the identification, evaluation or placement of the child or the provision of appropriate early intervention services to the child and the child's family, including matters that arise prior to the filing of a due process hearing, to resolve the disputes through a mediation process.

The mediation procedures must ensure that participation is voluntary on the part of the parties. Mediation may not be used to deny or delay the parent's right to a due process hearing or to deny any other rights afforded under Part C of the Act. It must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. Mediators are selected on a random basis.

The state Birth to 3 Connections program shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of appropriate early intervention services. An individual who serves as a mediator may not be an employee of the program or state agency providing services to the child. They must not have a personal or professional conflict of interest. The state will bear the cost of the mediation process.

A person who otherwise qualifies as a mediator is not an employee of a program or state agency solely because he or

she is paid by the state Birth to 3 Connections program to serve as a mediator.

Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute. An agreement reached by the parties to the dispute in the mediation must be set forth in a written mediation agreement.

Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be required to sign a confidentiality pledge prior to the beginning of the process.

If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:

1. states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding arising from that dispute; and
2. is signed by both the parent and a representative of the program who has the authority to bind such program.

A written, signed mediation agreement under this section is enforceable in any state court of competent jurisdiction or in a district court of the United States.

If you choose not to use the mediation process, the program or a state agency providing services to the child may establish procedures to offer you and to the program an opportunity to meet, at a time and location convenient to

you, with a disinterested party, to encourage the use and explain the benefits of the mediation process to you. This party may be under contract with a parent training and information center, community parent resource center established in the state or with an appropriate alternative dispute resolution entity.

IMPARTIAL DUE PROCESS HEARINGS

You or the program may initiate a hearing on any matters relating to the identification, evaluation or placement of your child or the provision of appropriate early intervention services to your child and family.

A parent or program must request an impartial hearing on their due process complaint within two years of the date the parent or program knew or should have known about the alleged action that forms the basis of the due process complaint, or if the state has an explicit time limitation for requesting such a due process hearing under Part C of IDEA, in the time allowed by state law.

The timeline described above does not apply to a parent if the parent was prevented from filing a due process complaint due to:

1. Specific misrepresentations by the program that it had resolved the problem forming the basis of the due process complaint; or
2. The program's withholding of information from the parent that was required under Part C of IDEA to be provided to the parent.

If you are unable to resolve your differences through a resolution session, or the mediation process, a due process

hearing will be held. This hearing is a legal process in which both parties present their differing viewpoints to a hearing officer. The hearing officer writes a finding of fact and decision based on the information presented by both parties.

A party, parent or program, may not have a hearing on a due process complaint or engage in a resolution session until the party, or the attorney representing the party, files a due process complaint that meets the requirements of this section.

A due process complaint notice may be submitted by a parent, program, or an attorney representing either party. It must be submitted to the state Birth to 3 Connections program in writing. The due process complaint notice must include:

1. The name of the child;
2. The address of the residence of the child;
3. The name of the program providing early intervention services to the child
4. In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the program providing early intervention services to the child;
5. A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
6. A proposed resolution of the problem to the extent known and available to the party at the time.

The state Birth to 3 Connections program has developed a model form to assist parents in filing a complaint and due process complaint notice.

The program must have procedures that require either party, parent or program, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

RESOLUTION SESSION

The Birth to 3 Connections program must hold a resolution session within 15 days of receiving notice of the parents' due process complaint, and prior to the opportunity for a due process hearing. The program must convene a meeting with the parents and the relevant member or members of the IFSP team who have specific knowledge of the facts identified in the due process complaint that:

1. Includes a representative of the program who has decision-making authority on behalf of the program; and
2. May not include an attorney of the program unless the parent is accompanied by an attorney.

The purpose of the resolution session is for the parents of the child to discuss their due process complaint, and the facts that form the basis of the due process complaint, so that the program has the opportunity to resolve the complaint.

The resolution session described above need not be held if:

1. The parents and the program agree in writing to waive the meeting; or

2. The parents and the program agree to use the mediation process described in this document.

If the program has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint, the due process hearing must occur and all applicable timelines for a due process hearing shall commence.

Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

If a resolution to the dispute is reached at the meeting described above, the parent and program must execute a legally binding agreement that is:

1. Signed by both the parent and a representative of the program who has the authority to bind the program; and
2. Enforceable in any state court of competent jurisdiction or in a district court of the United States.

If the parent and the program execute an agreement, either may void the agreement within 3 business days of the agreement's execution.

A successful resolution session ends the Impartial Due Process hearing procedure.

If the resolution session ends without agreement, a hearing officer is appointed and a hearing is scheduled.

The party, parent or program, requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint unless the other party agrees otherwise.

When a hearing is initiated, the program shall inform you of the availability of mediation. If you are requesting a hearing or request information on any free or low-cost legal services, the program shall inform you of it and any other relevant services available in the area.

At a minimum, a hearing officer:

1. Must not be:
 - a. An employee of any agency or other entity involved in the provision of early intervention services or care of the child; or
 - b. A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;
2. Must possess knowledge of, and the ability to understand, the provisions of IDEA, federal and state regulations pertaining to IDEA, and legal interpretations of IDEA by federal and state courts;
3. Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
4. Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

A person who otherwise qualifies to conduct a hearing under this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. The state Birth to 3 Connections program shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

Any party to a hearing has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
2. Present evidence and confront cross-examine, and compel the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;
4. Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
5. Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

As a parent involved in the hearing, you have the right to:

1. Have the child who is the subject of the hearing present; and
2. Open the hearing to the public.

A hearing officer may bar any party that fails to comply with the disclosure requirements of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

At least 5 business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering

party's evaluations that the party intends to use at the hearing.

The party filing a due process complaint must forward a copy of the due process complaint to the state Birth to 3 Connections program.

The due process complaint required by this section must be deemed sufficient unless the party, parent or program, receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements of this section.

Within five days of receipt of the above notification, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of this section, and must immediately notify the parties in writing of that determination.

A party may amend its due process complaint only if:

1. The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution session; or
2. The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

The applicable timeline for a due process hearing under Part C shall recommence at the time the party files an

amended notice, including the timeline for a resolution session.

If the program has not sent a prior written notice under Part C of IDEA to the parent regarding the subject matter contained in the parent's due process complaint, the program must, within 10 days of receiving the due process complaint, send to the parent a response that includes:

1. An explanation of why the program proposed or refused to take the action raised in the due process complaint;
2. A description of other options that the IFSP Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the program used as the basis for the proposed or refused action; and
4. A description of the other factors that are relevant to the program's proposed or refused action.

A response by a program under this section shall not be construed to preclude the program from asserting that the parent's due process complaint was insufficient, where appropriate.

Except as provided above, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

Subject to this section, a hearing officer must make a decision on substantive grounds based on a determination of whether the child and the child's family received appropriate early intervention services.

In matters alleging a procedural violation, a hearing officer may find that a child or a child's family did not receive appropriate early intervention services only if the procedural inadequacies:

1. Impeded the child and family's right to appropriate early intervention services;
2. Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of appropriate early intervention to the child and the child's family; or
3. Caused a deprivation of early intervention benefit.

Nothing in this section shall be construed to preclude a hearing officer from ordering the program to comply with procedural requirements in this document.

Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

The record of the hearing and the findings of fact and decisions must be provided at no cost to you.

The state Birth to 3 Connections program, after deleting any personally identifiable information, shall transmit the findings and decisions to the State Interagency Coordinating Council (SICC), and make those findings and decisions available to the public.

A decision made in a hearing is final, except that any party involved in the hearing may appeal the decision through civil action.

The state Birth to 3 Connections program shall ensure that not later than 45 days after the expiration of the 30 day period regarding a resolution session:

1. A final decision is reached in the hearing; and
2. A copy of the decision is mailed to each of the parties.

CIVIL ACTIONS

Any party aggrieved by the findings or decisions made through the hearing process has the right to bring a civil action with respect to the complaint presented in the hearing. The action may be brought in any state court of

competent jurisdiction or in a district court of the United States without regard to the amount of controversy. The party, parent or program, bringing the action shall have 90 days from the date of the decision of the hearing officer to file a civil action, or, if the state has an explicit time limitation for bringing civil actions under Part C of the Act, in the time allowed by state law.

In any action brought under this section, the court:

1. Shall receive the records of the administrative proceedings;
2. Shall hear additional evidence at the request of a party ; and
3. Basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

The district courts of the United States have jurisdiction of actions brought under section 615 of the IDEA without regard to the amount in controversy. Nothing in this part

restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the IDEA, the due process hearing procedures must be exhausted to the same extent as would be required had the action been brought under section 615 of the IDEA.

SURROGATE PARENTS

The rights of children eligible under Part C are protected if:

1. No *parent* can be identified;
2. The early intervention program consultant, after reasonable efforts, can not discover the where-abouts of a *parent*;
3. Legal custody of the child and all parental rights and responsibilities for the care and custody of the child have been terminated by Court order; or
4. The child is a ward of the state under the laws of South Dakota.

An individual is assigned to act as a surrogate for the *parent* according to the procedures that follow. The procedures include a method for determining whether a child needs a surrogate parent and assigning a surrogate to the child. The following criteria are employed when selecting surrogates.

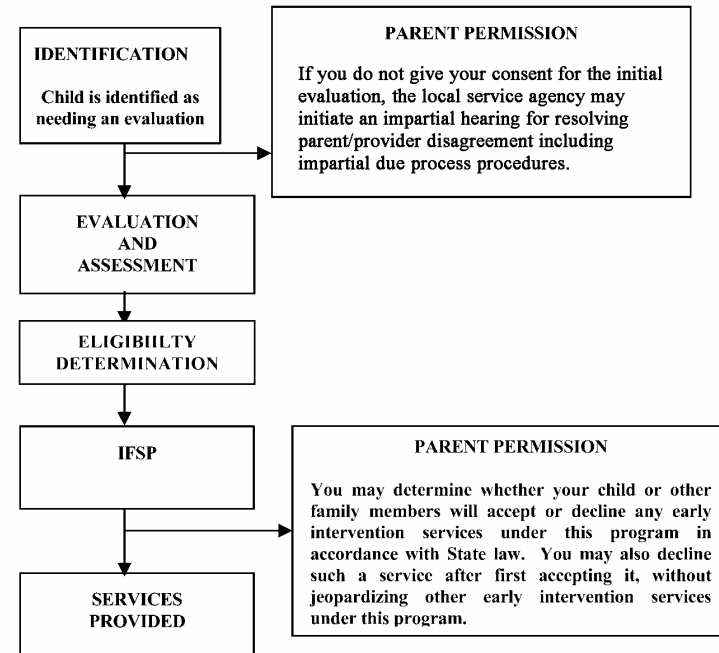
1. Surrogate parents are selected in ways permitted by state law.
2. A person selected as a surrogate:

- a. Has no interest that conflicts with the interest of the child he or she represents;
- b. Has knowledge and skills that ensure adequate representation of the child;
- c. Is not an employee of any agency or a person or an employee of a person providing early intervention services to the child or to any family member of the child. A person who otherwise qualifies to be a surrogate parent under this section is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent; and
- d. Resides in the same general geographic area as the child, whenever possible.

A surrogate parent may represent the child in all matters relating to:

- 1. The *evaluation* and *assessment* of the child;
- 2. Development and implementation of the child's *IFSPs*, including annual *evaluations* and periodic reviews;
- 3. The ongoing provision of early intervention services to the child; and
- 4. Any other rights established under the Birth to 3 Connections program.

INDIVIDUALIZED FAMILY SERVICE PLAN FLOW CHART



Note: If you disagree with a public agency or local service provider on the (1) identification, (2) evaluation, (3) placement of your child, or (4) provision of appropriate early intervention services to your child or family, you have the right to a timely administrative resolution of your concerns. Confidentiality rules apply throughout the entire process.

GLOSSARY

<i>Assessment:</i>	<p>The ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility under this part to identify--</p> <ul style="list-style-type: none"> a. The child's unique strengths and needs and the services appropriate to meet those needs; b. The resources, priorities and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability; and c. The nature and extent of early intervention services that are needed by the child and the child's family to meet the needs in a. and b. above.
<i>Destruction:</i>	Physical destruction or removal of personal identifiers from information that is no longer personally identifiable.
<i>Disclosure:</i>	To permit access to or the release, transfer, or other communication of education records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic means.
<i>Early Intervention records or records:</i>	Records covered by Family Education Rights and Privacy Act (FERPA).
<i>Evaluation or Multidisciplinary Evaluation:</i>	The procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility under this part, consistent with the definition of "infants and toddlers with disabilities" in Federal Regulations 303.16, including determining the status of the child in each of the developmental areas.
<i>IFSP:</i>	<p>Individualized Family Service Plan (IFSP): A written plan for providing early intervention services to eligible children/families that:</p> <ul style="list-style-type: none"> a. Is developed jointly by the family and appropriate qualified personnel providing early intervention services; b. Is based on the multidisciplinary evaluations and assessment of the child and the assessment of the strengths and needs of the child's family, as determined by the family and as required in 34 CFR 303.322; and c. Includes services necessary to enhance the development of the child and the capacity of the family to meet the special needs of the child.
<i>Mediation:</i>	A voluntary process freely agreed to by parents and providers to attempt to resolve Part C disagreements. Neither party is required to participate in the mediation process and both parties must approve any agreement reached. Mediation may not be used to deny or delay your right to an impartial hearing.
<i>Natural Environment:</i>	Settings that are natural or normal for the child's age peers who have no disability.
<i>Native Language:</i>	Where used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of an eligible child.

<i>Parent:</i>	The term "parent" means a natural or adoptive parent, a foster parent, unless State law, prohibits a foster parent from acting as a parent, a guardian, a person acting as a parent of a child (such as grandparent or stepparent with whom the child lives, as well as persons legally responsible for the child's welfare), or a surrogate who has been appointed under these procedures. This term does not include the State if the child is a ward of the State.
<i>Participating Agency:</i>	Any agency or institution which collects, maintains, or uses personally identifiable information, or from which information is obtained, under this part.
<i>Personally Identifiable:</i>	Information which includes: (1) the name of your child, your name, or other family member; (2) the address of your child; (3) a personal identifier, such as your child's or your social security number; or (4) a list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.
<i>Ward of the State:</i>	<p>Ward of the state means a child who, as determined by the state where the child resides, is:</p> <ol style="list-style-type: none">1. A foster child;2. A ward of the state; or3. In the custody of a public child welfare agency. <p>Ward of the state does not include a foster child who has a foster parent who meets the definition of a parent as described above.</p>

**For more information, contact your
*Local Service Coordinator:***

- ***or call 1-800-305-3064 for statewide information and referral for Early Intervention Services.***
- **Part C Coordinator
Department of Education
700 Governors Drive
Pierre, SD 57501
(605) 773-3678 - (605) 773-6302 TTY
<http://doe.sd.gov/oess/Birthto3/index.asp>**
- **South Dakota Advocacy Services
221 S. Central
Pierre, SD 57501
(605) 224-8294 in Pierre area
1-800-658-4782 (Voice & TTY)
www.sdadvocacy.com**
- **South Dakota Parent Connection
3701 W. 49th Street, Suite 200B
Sioux Falls, SD 57106
1-800-640-4553
www.sdparent.org**